

W. DUANE KENNEDY

IBLA 76-271

Decided March 10, 1976

Appeal from letter decision of Utah State Office, Bureau of Land Management, rejecting oil and gas lease offer U-30453.

Dismissed.

1. Attorneys--Practice Before the Department: Persons Qualified to Practice

Qualifications to practice before the Department of the Interior are prescribed by regulations. Where an appeal is brought by a person who does not appear to fall within any of the categories of persons authorized to practice, the appeal is subject to dismissal.

2. Oil and Gas Leases: Applications: Drawings--Oil and Gas Leases: Non-competitive Leases--Oil and Gas Leases: Rentals

An offeror is properly disqualified under 43 CFR 3112.4-1 from receiving a noncompetitive oil and gas lease on an offer drawn with the first priority at a simultaneous drawing when he fails to pay the first year's rental within 15 days (or the first business day thereafter) of receipt of the notice that such payment is due. An attempt to make payment after the close of office hours on the day the payment is due will not prevent the disqualification.

APPEARANCES: Larry L. Ripaldi, President of Key Energy Corp., for W. Duane Kennedy.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

In the drawing of simultaneously filed oil and gas lease offers conducted by the Utah State Office in June 1975, the offer of W. Duane

Kennedy was first drawn for parcel U 222. On June 27, 1975, the State Office transmitted to Kennedy by certified mail a notice that his rental was due. This notice specified the following:

In accordance with regulations 43 CFR 3112.4-1, payment of the first year's rental must be received in this office within fifteen (15) days from receipt of this Notice. If the rental is not paid within the time allowed, you will be automatically disqualified to receive the lease.

The return receipt card shows delivery of the notice on July 7, 1975. The rental payment therefore was due before 4 p.m. on July 22, 1975. The State Office is open for the filing of documents from 10 a.m. to 4 p.m. and documents must be filed during these hours. 43 CFR 1821.2-1. Payment was tendered by telegraphic money order dated July 22, but the actual time of receipt by BLM was stamped on the money order envelope as 11:01 a.m., July 23. By letter of August 26, 1975, the State Office informed Kennedy that he was automatically disqualified to receive the lease because the rental was not paid within the time permitted, and that his payment would be refunded.

Larry L. Ripaldi, President of Key Energy Corp., by letter of September 10, 1975, informed the State Office that his corporation did wire the rental fee within the time required. He enclosed a copy of a message from Western Union stating that the Western Union Money Order message was received by Western Union in Salt Lake City at 3:10 p.m., on July 22, and that notice was left at BLM State Office after an attempted delivery at 4:30 p.m., that day. Ripaldi also stated that "we are appealing your decision as per your letter of August 26, 1975."

Ripaldi, as President of Key Energy Corp., has not demonstrated that he is qualified to represent Mr. Kennedy on appeal before this Board. He has not shown himself to be an attorney at law who is admitted to practice before the courts, nor has he shown that he is eligible under any of the special circumstances listed in 43 CFR 1.3.

Furthermore, Ripaldi's assertion that 'we are appealing' is of no significance because he has no interest in the lease as Kennedy's drawing card shows that Kennedy is a sole party in interest. The case file includes a copy of a confirmation of a contract between Kennedy and Key Energy Corp., regarding filing and informational services but there is nothing in this contract to show that Ripaldi is qualified to represent Kennedy before this Board or that Key Energy Corp., has any interest in the offer so as to be considered a party.

[1] Where an appeal is brought by a person who does not appear to fall within any of the categories of persons authorized to practice before the Department, the appeal is subject to dismissal unless it is shown that the person is authorized to practice before the Department. Thomas P. Lang, 14 IBLA 20 (1973); Henry H. Ledger, 13 IBLA 356 (1973). Ripaldi has made no such showing. The appeal is dismissed.

[2] In any event, this lease offer is properly rejected under 43 CFR 3112.4-1 which provides that a drawee failing to submit the rental payment within the time allowed will be automatically disqualified to receive the lease. The attempt to deliver the payment after hours on July 22, was to no avail. See 43 CFR 1821.2-1. The disqualification of the offer of the successful drawee for failure to submit the advance lease rental within the prescribed time is mandatory under 43 CFR 3112.4-1. Mar-Win Development Co., 20 IBLA 383 (1975); Robert D. Nininger, 16 IBLA 200 (1974); aff'd Nininger v. Morton, Civ. No. 74-1246 (D.D.C., March 25, 1975).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is hereby dismissed.

Douglas E. Henriques  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Joseph W. Goss  
Administrative Judge

